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FILED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

IN THE MATTER OF THE DENIAL)	FINDINGS OF FACT,
OF APPLICATION FOR LICENSE)	CONCLUSIONS OF LAW,
FOR RICHARD RYAN)	RECOMMENDED ORDER
)	AND ORDER
)	
)	CAUSE NO.: A-1441

This matter came on for hearing on the 14th day of November, 2001, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance agent license. The Nebraska Department of Insurance ("Department") was represented by its legal counsel, Eric Dunning. Richard Ryan ("Applicant") was present and offered oral and written testimony. Deb Strudl, a caseworker at Child Protective Services, a division of Health and Human Services of the State of Nebraska, testified on behalf of Applicant. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. Evidence was presented by Applicant and the Department, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. The Department is the duly designated agency charged with regulating the business of insurance and with exercising jurisdiction and control over the licensing of

insurance agents in the State of Nebraska, pursuant to Neb. Rev. Stat. §§44-101.01 and 44-4047 et seq.

2. On or about October 12, 2000, Applicant first applied for a resident insurance agent's license to sell credit life/credit accident and health insurance. (Ex. 3). On said application, Applicant disclosed that he had previously been convicted of or pled nolo contendere (no contest) to any misdemeanor or felony by checking the box located at Part III, C, of the application. Applicant testified that the Department, in response, requested certified copies of the court proceedings related to his conviction. After receiving the certified copies, Applicant re-submitted an application with the certified copies. Said application was received by the Department on October 12, 2001. (Ex. 3).

3. On or about October 25, 2001, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, notified Applicant that his application for an insurance agent's license was denied based upon Neb. Rev. Stat. §44-4059 (1)(f). (Ex. 5). Neb. Rev. Stat. §44-4059 provides that the Director may deny an application for an agent's, broker's, or agency license if the Applicant has been convicted of any felony or Class I, II or III misdemeanor.

5. On or about October 25, 2001, Applicant requested a hearing, pursuant to Neb. Rev. Stat. §44-4059 (2), to appeal the decision denying him an insurance agent's license by the Department. (Ex. 2).

6. The Notice of Hearing was served upon the Applicant by certified mail, return receipt requested to the address of 7501 L Street, Omaha, NE 68127-1820 on or about November 1, 2001. (Ex. 1).

7. In response to Part III, C, of the application form, Applicant disclosed a conviction in 1993 for a Class IV Felony, Criminal Mischief in the District Court of Douglas County, Nebraska for intentionally or recklessly damaging property of the Iowa State Patrol, causing a loss in a sum in excess of \$300.00. (Ex. 4). Applicant was sentenced to imprisonment for a period of eighteen (18) to thirty-six (36) months and charged the costs of prosecution. Applicant testified he was incarcerated twelve (12) months and was on parole for approximately twelve (12) additional months.

8. Applicant testified that following his conviction and subsequent release, he voluntarily committed himself to an in-patient alcohol treatment center. Applicant is a recovering alcoholic and celebrates three years of sobriety. (Ex. 6).

9. Applicant is currently employed with L Street Auto/Professional Leasing, Inc., 7501 L Street, Omaha, Nebraska and he testified that this license is required by his current position. Applicant has been gainfully employed in other jobs. Applicant has a high school diploma and attended some college. (Ex. 7).

10. Applicant is a parent to one child and a foster parent to another child. He is currently awaiting proceedings to adopt his foster child. Deb Strudl, a Child Protective Services caseworker with the Department of Health and Human Services, testified that she has known Applicant since 1998 and has been actively involved in his case since that time. She testified that Applicant passed the CPS review to qualify as a foster parent and she provided case notes as an exhibit to the hearing. See Exhibit 7. Ms. Strudl testified that she prepared Exhibit 7.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance agents and brokers to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4001 et seq.
2. The Department has personal jurisdiction over Applicant.
3. Although the past conviction of Felony Criminal Mischief as well as the disclosure of two DUIs, one in 1994 and one in early 1998, referenced in Exhibit 7, constitute a sufficient basis for denying Applicant a license, consideration must be given to the fact that no legal action has been taken against Applicant since 1998, that Applicant has demonstrated successful completion of an alcohol rehabilitation program, and that Applicant is gainfully employed. The Director of the Department of Insurance should allow the Applicant to engage in the business of insurance as contemplated by 18 U.S.C. §1033(e).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director grant Applicant's request for an insurance agent's license with such license restricted to the sale of credit life/credit accident and health insurance. If at some point in the future Applicant wishes to seek licensing for additional lines of insurance, Applicant must come before the Director in support of his request.

Dated this 14th day of November, 2001.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

Christine M. Neighbors
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department In the Matter of the Denial of Application for License for Richard Ryan, Cause No.: A-1441.

Dated this 15th day of November, 2001.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

L. Tim Wagner
L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order and Order was served upon Applicant by mailing a copy to Applicant at 8320 Salem Court, Plattsmouth, NE 68048 by certified mail, return receipt requested on this 15th day of November, 2001.

Stacy M. Bullock